

# EXHIBIT D

July 5, 2013

Scott Bateman  
Acting Treasurer  
Fuller Road Management Corporation  
NanoFab East  
257 Fuller Road  
Albany, NY 12203

Dear Mr. Bateman:

On behalf of New York State and Empire State Development, please let me express my enthusiasm for working with you and Fuller Road Management Corporation to create the Smart Cities Technology Innovation Center (SCiTI Center) in the Capital Region of New York State.

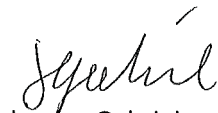
As we understand the project, Fuller Road Management Corporation will renovate the historic Kiernan Plaza, a vacant 111,000-square-foot building located in downtown Albany. This \$10,000,000 investment will create the Smart Cities Technology Innovation Center to house high tech firms performing research and development functions at the College Of Nanoscale Science and Engineering. The project is expected to attract ten or more companies, bringing 150 new jobs to downtown Albany.

To encourage you to proceed with this project, we are offering Fuller Road Management Corporation incentives valued at \$4,000,000.

Please review the attached Incentive Proposal to see how New York State and Empire State Development are prepared to assist Fuller Road Management Corporation in the development of its renovation project to create the Smart Cities Technology Innovation Center in the Capital Region of New York State. If you choose to accept our offer, please acknowledge your decision by endorsing the last page of the attached proposal and returning one copy to me and one copy to Susan Shaffer, Vice President of Empire State Development's Loans and Grants Department by August 5, 2013.

We look forward to working with you on this exciting project and can be reached at (518) 270-1130 at your convenience.

Very truly yours,



Jessica Gabriel  
Regional Director, Capital Region

cc: Kevin Younis  
Susan Shaffer

Attachment: ESD Incentive Proposal

**Fuller Road Management Corporation**

July 3, 2013

This **Incentive Proposal** outlines the general terms and conditions of the incentive package being offered by Empire State Development ("ESD")\* to Fuller Road Management Corporation to assist with its project in the City of Albany, Albany County. This offer is subject to the availability of funds, completion of any applicable (1) non-discrimination and contractor diversity, (2) environmental and historic and (3) smart growth review requirements, approval by the ESD Directors, applicable statutes, and compliance with program requirements.

\* The New York State Department of Economic Development and the New York State Urban Development Corporation, d/b/a Empire State Development, are collectively referred to as ESD.

**I. GENERAL INFORMATION**

**a) Recipient Name:** Fuller Road Management Corporation (the "Recipient")

**b) Contact Information:** Scott Bateman  
Acting Treasurer  
NanoFab East  
257 Fuller Road  
Albany, NY 12203  
Phone: (518) 437-8686  
Fax: (518) 437-8687  
E-mail: sbateman@albany.edu

**c) Project Location(s):** 575 Broadway  
Albany, NY 12222

**New York State Empire Zone:** N/A

**d) Type of Business:** Not-for-profit corporation organized under laws of the State of New York

**e) Number of Full-time, Permanent Employees at all NYS Locations as of Today's Date:** N/A

**f) Number of Full-time, Permanent Employees at Project Location(s) as of Today's Date:** N/A

**g) Number of Part-time or Seasonal Employees, or Full-time Contract Employees at Project Location(s) as of Today's Date:** N/A

## II. PROJECT SPECIFICS

- a) **Project Description:** Acquisition, renovation and fit-up of an 111,000-square-foot vacant, historic building located at 575 Broadway in Albany ("Building" or "Kiernan Plaza" interchangeably) to support startup companies and companies involved in smart cities technology that are conducting research and development associated with the College of Nanoscale Science and Engineering. The renovation will include reconfiguration of the Building systems to accommodate a multi-tenant building occupancy along with the fit-up of common and individual tenant spaces.
- b) **Estimated Schedule:** Begin: December 19, 2012  
Complete: April 2016  
Estimated ESD Directors' Approval: September 2013

## III. PROJECT BUDGET

You have informed us that the following costs will be incurred to complete this project. It is understood that these costs are estimates, based on the best information available to date. If these figures change, please inform your ESD contact as soon as possible.

Acquisition:	\$3,000,000
Construction / Renovation:	6,750,000
Other Costs (Architectural, Engineering):	<u>\$250,000</u>
<b>Total Estimated Cost*:</b>	<b>\$10,000,000</b>

- \* This budget acknowledges that 1) the applicant has not yet completed the architectural program for the building and 2) the final renovation costs will depend on the building requirements of tenants yet to be selected and the development of the extensive common spaces in the building.

## IV. ESD INCENTIVES

**Regional Council Capital Fund – Capital Grant – Project #Y368/CFA #17759 (\$2,625,000);**  
**Urban and Community Development Program – Capital Grant – Project #Y396/CFA #25101**  
**(\$1,375,000)**

- a) **Amount:** \$4,000,000
- b) **Use of Funds:** Reimbursement for a portion of Building acquisition, architectural and engineering, and renovation costs.

**c) Requirements:** Funds will be disbursed as reimbursement for eligible expenses during the following intervals and in compliance with the Design & Construction Requirements, assuming that all project approvals have been completed and funds are available.

1. 50% of the grant (\$2,000,000) will be disbursed upon completion of Building acquisition as evidenced by documentation of ownership of the Building by the grantee and \$3,000,000 in project expenditures, assuming that all project approvals have been completed and funds are available.
2. 40% of the grant (\$1,600,000) will be disbursed as reimbursement for eligible project costs incurred during the course of design and/or construction no more frequently than quarterly, in compliance with the Design & Construction Requirements, assuming that all project approvals have been completed and funds are available.
3. 10% of the grant (\$400,000) will be disbursed upon completion of that portion of the facility that will provide the initial occupancy, as evidenced by a certificate of occupancy for the initial tenants and total project expenditures of \$6,000,000 (inclusive of Building acquisition costs), assuming that all project approvals have been completed and funds are available. Payment will be made upon presentation to ESD of an invoice and such other documentation as ESD may reasonably require including progress reports on the achievement of project goals and objectives as specified in Attachment A.

All disbursements require compliance with program requirements and must be requested by no later than December 31, 2016. Expenditures incurred prior to December 19, 2012, the date of award announcement, are not eligible project costs. Expenditures incurred prior to written acceptance of this Incentive Proposal cannot be reimbursed by grant funds. Progress reports on the achievement of project goals and objectives as specified in Attachment A must be submitted annually for two years following the final disbursement in order to monitor project results.

**d) Recapture** Grant funds will be subject to *pro rata* recapture if property is sold within 5 years of disbursement of funds.

### **General Requirements**

- **Equity:**  
The Recipient will be required to contribute a minimum of 10% of the total project cost in the form of equity contributed after the Recipient's written acceptance of ESD's Incentive Proposal. Equity is defined as cash injected into the project by the Recipient or by investors and should be auditable through Recipient financial statements or Recipient accounts, if so requested by ESD. Equity cannot be borrowed money secured by the assets in the project.
- **Fees:**  
The Recipient will provide a \$250 fee, due at the time of acceptance of this Incentive Proposal, and a 1% commitment fee (\$40,000), due when the Recipient executes documents required for processing the grant. In addition, the Recipient will reimburse ESD for any direct expenses incurred in connection with this project, including costs related to holding a public hearing, attorney fees, appraisals, surveys, title insurance, credit searches, filing fees, and other requirements deemed appropriate by ESD.
- **Non-discrimination and Contractor Diversity:**  
ESD's Non-discrimination and Contractor Diversity policy will apply to the Project. The Recipient shall be required to use good faith efforts to achieve an overall Minority and Women Business Enterprise ("MWBE") Participation goal of 23%, Minority Business Enterprise ("MBE") Participation goal of 13% and a Women Business Enterprise ("WBE") Participation goal of 10% related to the total value of ESD's funding and to solicit and utilize MWBEs for any contractual opportunities generated in connection with the Project. A further explanation of the MWBE requirements is attached hereto.
- **Design and Construction Review:**  
Upon acceptance of this Incentive Proposal and prior to moving forward with the project, ESD's Design and Construction ("D&C") staff will meet with the Recipient to discuss ESD's required review of design and construction documents, addendum, cost estimates and monitoring of the bid and contract award process. D&C will, at its option, attend design and construction meetings and monitor all progress. D&C will review all change orders and contractor requisitions and verify that all requirements have been satisfied prior to approving the release of ESD funds, including acceptable completion of D&C requirements and forms.
- **Environmental, Historic and Smart Growth Review:**  
Please note in particular the Environmental, Historic and Smart Growth Review requirements at the end of the attached document, which, if applicable, must be satisfied prior to ESD Board approval of funding. The ESD Planning & Environmental Review office may contact your office for further information regarding status of the environmental, historic and smart growth review for your project.
- **Environmental Sustainability:**  
ESD encourages the environmentally sustainable practice of recycling construction and demolition debris rather than disposition in a landfill.
- **Modification:**  
ESD reserves the right to review and reconsider project and property selections in the event of material changes in the project plans or circumstances.
- **Reservations of Rights Concerning Funding Commitment:**  
It is expected the project will proceed in the time frame set forth by the Applicant. If the implementation of a project fails to proceed as planned and is delayed for a significant period of time and there is, in the exclusive judgment of ESD, doubt
- **Next Steps After Accepting this Incentive Proposal:**  
Within approximately 30 days of your acceptance of this Incentive Proposal, your Project Manager will acknowledge receipt of the signed Incentive Proposal and will provide a guide to the ESD Approval and Disbursement Process and relevant contact information. Prior to ESD Board approval, ESD will require updated project information and Declarations and Certifications. Please note that ESD Board approval typically occurs at project completion.

**V. SUMMARY**

**TOTAL – ALL INCENTIVES**

**\$4,000,000**

**Expiration of Proposed Offer:**

This proposal expires 30 (thirty) days from the date of this offer unless endorsed below and received by ESD prior to the expiration date

**Expiration of Accepted Offer:**

The accepted proposal expires two years from the date of acceptance by the Recipient. ESD reserves the right to require Recipient to provide any additional information and/or documentation ESD deems necessary.

APPROVED BY:



Date:

7/2/13

Susan Shaffer, Vice President  
ESD Loans & Grants  
633 Third Avenue  
New York, NY 10017  
Phone: (212)803-3644  
Fax: (212)803-3925

ACCEPTED BY:

Date:

Scott Bateman, Acting Treasurer  
Fuller Road Management Corporation  
NanoFab East  
257 Fuller Road  
Albany, NY 12203  
Phone: (518) 437-8686  
Fax: (518) 437-8687

\* Please see the following Affirmation page, which must be completed, signed and notarized for this Incentive Proposal to be considered accepted.

Fuller Road Management Corporation  
Incentive Proposal

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July 3, 2013

AFFIRMATION

STATE OF NEW YORK            )  
  ) ss.:  
COUNTY OF                    )

The Undersigned, being duly sworn, deposes and says:

1. I, \_\_\_\_\_, am the \_\_\_\_\_ of \_\_\_\_\_ (the "Recipient"), a corporation that is duly organized and validly existing under the laws of \_\_\_\_\_, and is authorized to do business and is in good standing in the State of New York.

2. I have read and know the contents of the Incentive Proposal prepared by the New York State Urban Development Corporation d/b/a Empire State Development ("ESD") dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

3. I have reviewed all of the information provided by the Recipient to ESD to assist in ESD's preparation of the Incentive Proposal, including information provided on Recipient's behalf by third-party consultants (together, "Information").

4. I know all of the information provided by Recipient or its third-party consultants to be true and complete in all material respects. To the extent such information involves projections about future performance, these projections have been prepared in good faith, based upon reasonable assumptions.

5. Recipient did not make a decision to undertake the project described in the Incentive Proposal prior to [date of Incentive Proposal.]

6. Recipient hereby accepts the terms of the Incentive Proposal.

7. Receipt of the Incentive Proposal was a material factor in Recipient's decision to undertake the above-referenced project.

8. I agree to allow the Department of Taxation and Finance to share Recipient tax information with Empire State Development.

9. I authorize the Commissioner of Labor to disclose, to employees of both the New York State Department of Labor, the New York State Department of Economic Development, and the Urban Development Corporation, (dba Empire State Development), all records filed by the Recipient in making Unemployment Insurance (U.I.) reports and contributions required by State Labor and Tax Law, including, but not limited to, all information contained in or relating to the quarterly combined withholding, wage reporting and U.I. returns, the registration for U.I., the New Hire file, and all records of U.I. delinquencies. In addition, this authorization shall include all information contained in any survey reports requested by the Department of Labor on behalf of the U.S. Department of Labor, Bureau of Labor Statistics including, but not limited to, the Current Employment, Occupational Employment, multiple worksite, and annual refilling surveys. The use of information and records released pursuant to this authorization shall be limited to government purposes concerning the Recipient and assistance described in this Incentive proposal to monitor compliance with worker protection laws and with the conditions and requirements associated with the financial assistance being requested.

10. I certify, under penalty of perjury, that the Recipient is in substantial compliance with all environmental, worker protection, and local, state and federal tax laws.

\_\_\_\_\_  
Signature

Subscribed and sworn to before me  
this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Notary Public



## ENVIRONMENTAL, HISTORIC AND SMART GROWTH REVIEW REQUIREMENTS

Approval of funding by ESD, a public benefit corporation of the State of New York, requires compliance with environmental, historic and smart growth review requirements under New York State regulations. The information below provides a brief guide to the review processes. If you have any questions about the required documentation or how to proceed in these areas, please contact ESD's Planning & Environmental Review Office at (212) 803-3252 or 3253. **Physical work on an ESD-funded project must not be started prior to the completion of any necessary environmental, historic and/or smart growth review.**

### Environmental Review

- Projects or physical activities, such as construction or other activities that may affect the environment by changing the use, appearance or condition of a site or structure require review under the State Environmental Quality Review Act (SEQRA)(6 NYCRR Part 617).
- The applicant must demonstrate compliance with SEQRA. If SEQRA review is required for the project, the review must be completed by a lead agency such as a municipal planning or zoning board, common council, county industrial development agency, or ESD itself.
- Please note that if the project consists of more than one phase, a SEQRA review must be completed for all known or reasonably foreseeable phases of the project, not only the phase that is the subject of ESD funding. An environmental review of only a portion of a project constitutes improper segmentation under SEQRA and is not accepted except in special circumstances.
- Required SEQRA documentation:
  - If the project has been determined to have no significant effect on the environment, the following two documents must be provided:
    1. Environmental Assessment Form (EAF) –Short or Full EAF, as appropriate for the project. All parts must be fully completed; and
    2. Negative Declaration

If a Positive Declaration was issued for the project, indicating that the project may have a significant adverse impact on the environment, the following documents must be provided:

1. Draft and Final Environmental Impact Statement (DEIS and FEIS) – digital copy is preferable; and
2. Lead Agency Statement of Findings.

For further information about SEQRA, please visit the New York State Department of Environmental Conservation's web site at <http://www.dec.ny.gov/63.html>.

### Historic Review

- Projects involving a building, structure, district, or site, including underground or underwater sites, listed on or eligible for listing on the State or National Register of Historic Places (S/NR) must be evaluated by the State Historic Preservation Office (SHPO) of the New York State Office of Parks, Recreation and Historic Preservation in accordance with Section 14.09 of the New York State Parks, Recreation and Historic Preservation Law. Buildings that are more than 50 years old that are historically, architecturally, archeologically, or culturally significant may meet the eligibility criteria for S/NR listing.
- The applicant must demonstrate compliance with Section 14.09. In order to complete the SHPO consultation process, the applicant must write to SHPO, notifying them of the proposed state funded project and requesting comment on the project, and submit project materials along with the Project Review Submission Cover Form found on the SHPO web site at <http://nysparks.state.ny.us/shpo/environ/forms.htm>. Upon completion of the SHPO consultation process, SHPO will determine whether or not the project will have an adverse impact on historical or cultural resources and will then provide a letter of comment on the project.
- Required SHPO documentation:
  - Letter of No Adverse Impact determination or
  - Letter of Resolution – required if SHPO determines that the project will have an Adverse Impact on historic or cultural resources.

### Smart Growth

The State Smart Growth Public Infrastructure Policy Act of 2010 requires that public infrastructure projects approved, undertaken, supported or financed by a State Infrastructure Agency, which includes ESD, to the extent practicable, are consistent with relevant Smart Growth Criteria specified in the law. Projects that involve ESD approval of funding for public infrastructure (e.g., publicly-supported roads, bridges, streetscapes, other transportation systems, drinking water, sewers, drainage systems, and utilities) will require the completion of a Smart Growth Impact Statement prior to approval of funding. ESD staff may contact the applicant if a Smart Growth Impact Statement is required.

The full text of the State Smart Growth Public Infrastructure Policy Act may be found at: [http://assembly.state.ny.us/leg/?default\\_fld=&bn=A08011&term=2009&Text=Y](http://assembly.state.ny.us/leg/?default_fld=&bn=A08011&term=2009&Text=Y)

## **PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED MWBEs**

ESD is required to comply with and implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 ("MWBE Regulations") for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.

Approval of funding by ESD, a public benefit corporation of the State of New York, is conditioned upon and subject to the following requirements:

- a) Recipient agrees to fully comply and cooperate with ESD in the implementation of New York State Executive Law Article 15-A. These requirements include contracting opportunities for MWBEs.
- b) For purposes of this project, ESD hereby establishes an overall goal of 23% for MWBE participation, 13% for MBE participation and 10% for WBE participation (based on the current availability of qualified MBEs and WBEs).
- c) Recipient's demonstration of "good faith efforts" pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, other applicable federal, state or local laws.
- d) For purposes of providing meaningful participation by MWBEs on the project and achieving the project goals established herein, Recipient should reference the directory of New York State Certified MWBEs found at the following internet address:

<https://ny.newnycontracts.com/>

Additionally, Recipient is encouraged to contact Diane Kinnicutt of ESD Office of Contractor and Supplier Diversity at (518) 292-5727 to discuss additional methods of maximizing participation by MWBEs on the project.

- e) Recipient is required to submit a MWBE Utilization Plan on Form E4 not later than ten (10) days after the execution of this Incentive Proposal. Any modifications or changes to the MWBE Utilization Plan after the execution of this Incentive Proposal and during the performance of the project must be reported on a revised MWBE Utilization Plan and submitted to ESD.
- f) ESD will review the submitted MWBE Utilization Plan and advise the Recipient of ESD acceptance or issue a notice of deficiency within twenty (20) days of receipt.
- g) If a notice of deficiency is issued, Recipient agrees that it shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to the OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY, EMPIRE STATE DEVELOPMENT, 633 THIRD AVENUE, 33<sup>RD</sup> FLOOR, NEW YORK, NY 10017, 212-803-3226 (ph), 212-803-3223 (fax), a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by ESD to be inadequate, ESD shall notify the Recipient and direct the Recipient to

submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals on Form E5. Failure to file the waiver form in a timely manner may result in a finding that Recipient has intentionally or willfully failed to comply with the requirements of Article 15-A of the Executive Law and the MWBE provisions outlined herein.

- h) ESD may find that Recipient has willfully or intentionally failed to meet the MWBE project requirements under the following circumstances:
  - 1. If a Recipient fails to submit a MWBE Utilization Plan;
  - 2. If a Recipient fails to submit a written remedy to a notice of deficiency;
  - 3. If a Recipient fails to submit a request for waiver; or
  - 4. If ESD determines that the Recipient has failed to document good faith efforts.
- i) Recipient shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the project. Requests for a partial or total waiver of established goal requirements made subsequent to the execution of the Incentive Proposal may be made at any time during the term of the project to ESD, but must be made no later than prior to the submission of a request for final payment on the project.
- j) Recipient is required to submit a Quarterly M/WBE Contractor Compliance & Payment Report on Form E6 to the EMPIRE STATE DEVELOPMENT, 633 THIRD AVENUE, 33<sup>RD</sup> FLOOR, NEW YORK, NY 10017, 212-803-3244 (ph), 212-803-3223 (fax), by the 10<sup>th</sup> day following each end of quarter over the term of the project documenting the progress made toward achievement of the MWBE project goals.
- k) Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8, Recipient must document "good faith efforts" to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the project. The Recipient acknowledges that if Recipient is found to have willfully and intentionally failed to comply with the MWBE participation goals and requirements set forth herein, such a finding may result in the recapture of grant proceeds. Such MWBE Recapture shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Recipient achieved the MWBE project goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the project.

## **Attachment A – Project Goals and Objectives**

### **Goals:**

1. Create 150 positions over five years at the SCITl Center. Employment figures that will be provided to ESD as part of the reporting requirements set forth below and made part of the grants shall include the number of employees associated with new start-up, high tech companies who move into Downtown Albany, as well as personnel employed by the Recipient and the Research Foundation for The State University of New York, on behalf of the College of Nanoscale Science and Engineering and affiliates, partners and contractors.
2. Attract start-up and high tech companies to Downtown Albany with additional potential jobs by targeting high tech companies focusing on Smart Cities Technologies Innovation and support “back office” operations of companies performing RD&D at the CNSE Nano Tech Complex.

### **Metrics:**

1. Track the number of new positions created that move into Kiernan Plaza and the number of new backfills that may move into space vacated at the College of Nanoscale Science and Engineering Complex (Washington Avenue, Albany) by individuals who move into Kiernan Plaza during the course of project completion and annually for two years after final disbursement.
2. Track the number of new start-up, high tech companies with associated employees who move into Downtown Albany annually for two years following final disbursement.
3. Continue to provide ESD with documentation of Building fit-up costs as tenants and uses for the Building are determined.

**OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY**  
M/WBE CONTRACTOR COMPLIANCE AND PAYMENT REPORT

PROJECT SPONSOR/DEVELOPER  
(or "REPORTING COMPANY"):

FEDERAL EIN #:

ADDRESS:

TOWN/COUNTY/ZIP:

CONTACT PERSON:

TELEPHONE:

EMAIL:

ESD/OCSD REPRESENTATIVE:

PROJECT NAME:

PROJECT #:

PROJECT START DATE:

PERCENT COMPLETE:

ACTUAL COMPLETION DATE:

Attach M/WBE executed contracts, final lien waivers, cancelled checks, etc., or other documentation describing the "Good Faith Efforts" taken to achieve M/WBE program. This report should be completed and signed by an officer of the Reporting Company.

PRIME CONTRACTOR (Federal EIN #, Firm's Name, Address, Contact Person, Title and Phone # with area code)	CONTRACT AMOUNT	M/WBE SUBCONTRACTOR (Federal EIN #, Subcontractor Name, Address, Contact Person, Title and Phone # with area code)	SCOPE OF SERVICES	M/WBE CONTRACT AMOUNT	M/WBE PAYMENTS PREVIOUSLY REPORTED	M/WBE PAYMENTS ON CURRENT REPORT	TOTAL M/WBE PAYMENTS TO DATE

CERTIFICATION: I, \_\_\_\_\_ (Print Name) the \_\_\_\_\_ (Title) of the Reporting Company above, do certify that (i) I have read this Compliance Report and (ii) to the best of my knowledge, information and belief, the information contained herein is complete and accurate.

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_



**SUBMIT REPORT TO: OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY**

EMPIRE STATE DEVELOPMENT CORPORATION  
633 THIRD AVENUE, 33<sup>rd</sup> FLOOR  
NEW YORK, NY 10017

**Questions?** Please contact the Office of Contractor and Supplier Diversity (OCSD) Project Managers below:

**Vikas Gera**

Project Manager, OCSD  
(212) 803-3244

[vgera@esd.ny.gov](mailto:vgera@esd.ny.gov)

**Denise Ross**

Project Manager, OCSD  
(212) 803-3226

[dross@esd.ny.gov](mailto:dross@esd.ny.gov)

**Diane Kinnicutt**

Dept. of Economic Dev. (DED)  
(518) 292-5727

[dkinnicutt@esd.ny.gov](mailto:dkinnicutt@esd.ny.gov)

**Finger Lakes**

Western New York

NYC- Brooklyn & Queens

Long Island

All ESD Subsidiaries

**Southern Tier**

Mohawk Valley

Mid-Hudson Region

NYC-Manhattan, Staten Island

& Bronx

**North Country**

Capital District

Central New York

DED Procurement

**OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY**  
M/WBE UTILIZATION PLAN

**INSTRUCTIONS:** This form must be submitted with any bid, proposal, or proposed negotiated contract or within a reasonable time thereafter, but prior to contract award. This M/WBE Utilization Plan must contain a detailed description of the supplies and/or services to be provided by each certified Minority and Women-owned Business Enterprise (M/WBE) under the contract. Attach additional sheets if necessary.

Federal Employer Identification No. (FEIN):

Offeror's Name:

Offeror's Address:

City, State, Zip Code:

Telephone No.:

Region/Location of Work:

Solicitation No.:

Project No.:

M/WBE Goals in the Contract: MBE - % WBE - %

1. Certified M/WBE Subcontractors/Suppliers Federal Employer Identification Number (FEIN), Name, Address, Phone, Fax and Email Address.	2. Classification  NYS ESD CERTIFIED <input type="checkbox"/> MBE <input type="checkbox"/> WBE	3. Federal ID No.	4. Detailed Description of Work (Attach additional sheets, if necessary)	5. Dollar Value of Subcontracts / Supplies / Services and intended performance dates of each component of the contract.
A.				
B.	NYS ESD CERTIFIED <input type="checkbox"/> MBE <input type="checkbox"/> WBE			
6. IF UNABLE TO FULLY MEET THE MBE AND WBE GOALS SET FORTH IN THE CONTRACT, OFFEROR MUST SUBMIT A WAIVER REQUEST FORM (FORM E4).				



## **OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY**

M/WBE UTILIZATION PLAN

<p><b>PREPARED BY (Signature):</b> _____</p> <p><b>DATE:</b> _____</p> <p><b>Preparer's Name (Print or Type):</b> _____</p> <p><b>Preparer's Title:</b> _____</p> <p><b>Date:</b> _____</p> <p>SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A, 5 NYCRR PART 143, AND THE ABOVE-REFERENCED SOLICITATION. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND POSSIBLE TERMINATION OF YOUR CONTRACT.</p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;"><b>TELEPHONE NO.:</b></td> <td style="width: 50%;"><b>EMAIL ADDRESS:</b></td> </tr> <tr> <td colspan="2" style="text-align: center;"><b>** FOR OCSD-M/WBE USE ONLY **</b></td> </tr> <tr> <td><b>REVIEWED BY:</b></td> <td><b>DATE:</b></td> </tr> </table> <p><b>UTILIZATION PLAN APPROVED?</b></p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO <b>Date:</b> _____</p> <p><b>Contract No.:</b> _____</p> <p><b>Project No. (if applicable):</b> _____</p> <p><b>Contract Award Date:</b> _____</p> <p><b>Estimated Date of Completion:</b> _____</p> <p><b>Amount Obligated Under the Contract:</b> _____</p> <p><b>Description of Work:</b> _____</p> <p><b>NOTICE OF DEFICIENCY ISSUED?</b></p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO <b>Date of Issue:</b> _____</p> <p><b>NOTICE OF ACCEPTANCE ISSUED?</b></p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO <b>Date of Issue:</b> _____</p>	<b>TELEPHONE NO.:</b>	<b>EMAIL ADDRESS:</b>	<b>** FOR OCSD-M/WBE USE ONLY **</b>		<b>REVIEWED BY:</b>	<b>DATE:</b>
<b>TELEPHONE NO.:</b>	<b>EMAIL ADDRESS:</b>						
<b>** FOR OCSD-M/WBE USE ONLY **</b>							
<b>REVIEWED BY:</b>	<b>DATE:</b>						

<b>Waiver Applicant</b>				
Offeror / Contractor Name:	Fed ID No.:			
Address:	Solicitation/Contract No.:			
City, State, Zip Code:	M/WBE Goals: MBE: _____ %      WBE: _____ %			
<b><u>By submitting this form and the required information, the offeror / contractor certifies that every "Good Faith Effort" has been taken to promote M/WBE participation pursuant to the M/WBE requirements set forth under the contract. Review 5 NYCRR §142.8, Contractor's Good Faith Efforts, on page 2 of this form for the precise definition of "Good Faith Effort".</u></b>				
<b>Contractor is requesting a:</b>  1. <input type="checkbox"/> MBE Waiver – A waiver of the MBE Goal for this procurement is requested. <input type="checkbox"/> Total <input type="checkbox"/> Partial  2. <input type="checkbox"/> WBE Waiver – A waiver of the WBE Goal for this procurement is requested. <input type="checkbox"/> Total <input type="checkbox"/> Partial  3. <input type="checkbox"/> Waiver Pending ESD Certification – (Check here if subcontractors or suppliers of Contractor are not certified M/WBE, but an application for certification has been filed with Empire State Development).  Date of such filing with Empire State Development Corporation: _____				
PREPARED BY (Signature): _____ Date: _____  SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR/CONTRACTOR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A AND 5 NYCRR PART 143. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND/OR TERMINATION OF THE CONTRACT.				
Name and Title of Preparer (Printed or Typed):	Telephone Number:	Email Address:		
Submit with the bid or proposal or if submitting after award submit to:  <b>Empire State Development Corporation            Office of Contractor and Supplier Diversity            633 Third Avenue, 33<sup>rd</sup> Floor            New York, New York 10017</b>	<b>***** FOR M/WBE USE ONLY *****</b>			
	<table style="width: 100%;"> <tr> <td style="width: 70%;">REVIEWED BY:</td> <td style="width: 30%;">DATE:</td> </tr> </table>		REVIEWED BY:	DATE:
	REVIEWED BY:	DATE:		
	Waiver Granted: <input type="checkbox"/> YES      MBE: <input type="checkbox"/> WBE: <input type="checkbox"/> <input type="checkbox"/> Total Waiver <input type="checkbox"/> Partial Waiver <input type="checkbox"/> ESD Certification Waiver <input type="checkbox"/> *Conditional <input type="checkbox"/> Notice of Deficiency Issued _____			
* <u>Comments:</u> _____				

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5 NYCRR §142.8 - Contractor's Good Faith Efforts

- (a) The contractor must document its good faith efforts toward meeting certified minority and women-owned business enterprise utilization plans by providing, at a minimum:
- (1) Copies of its solicitations of certified minority and women-owned business enterprises and any responses thereto;
  - (2) If responses to the contractor's solicitations were received, but a certified minority or woman-owned business enterprise was not selected, the specific reasons that such enterprise was not selected;
  - (3) Copies of any advertisements for participation by certified minority and women-owned business enterprises timely published in appropriate general circulation, trade and minority or women-oriented publications, together with the listing(s) and date(s) of the publication of such advertisements;
  - (4) Copies of any solicitations of certified minority and/or women-owned business enterprises listed in the directory of certified businesses;
  - (5) The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by the State agency awarding the State contract, with certified minority and women-owned business enterprises which the State agency determined were capable of performing the State contract scope of work for the purpose of fulfilling the contract participation goals;
  - (6) Information describing the specific steps undertaken to reasonably structure the contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified minority and women-owned business enterprises.
- (b) In addition to the information provided by the contractor in paragraph (a) above, the State agency may also consider the following to determine whether the contractor has demonstrated good faith efforts:
- (1) Whether the contractor submitted an alternative utilization plan consistent with the subcontract or supplier opportunities in the contract;
  - (2) The number of certified minority and women-owned business enterprises in the region listed in the directory of certified businesses that could, in the judgment of the State agency, perform work required by the State contract scope of work;
  - (3) The actions taken by the contractor to contact and assess the ability of certified minority and women-owned business enterprises located outside of the region in which the State contract scope of work is to be performed to participate on the State contract;
  - (4) Whether the contractor provided relevant plans, specifications or terms and conditions to certified minority and women-owned business enterprises sufficiently in advance to enable them to prepare an informed response to a contractor request for participation as a subcontractor or supplier;
  - (5) The terms and conditions of any subcontract or provision of suppliers offered to certified minority or women-owned business enterprises and a comparison of such terms and conditions